
HOUSE BILL 1691

State of Washington 60th Legislature 2007 Regular Session

By Representatives O'Brien, Darneille, Walsh, Dickerson, Hurst, Ericks, Lantz, Quall, Chase, Moeller, Linville, Santos, Wood and Kenney

Read first time 01/25/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to deferred prosecutions for persons with mental or
2 developmental disabilities; amending RCW 10.05.010, 10.05.015,
3 10.05.020, 10.05.030, 10.05.040, 10.05.050, 10.05.060, 10.05.070,
4 10.05.090, 10.05.100, 10.05.120, and 10.05.160; and creating a new
5 section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that:

8 (1) A significant number of individuals with mental or
9 developmental disabilities who are in need of treatment or habilitative
10 supports and services are inappropriately detained in correctional
11 facilities; and

12 (2) Deferred prosecution is an alternative to punishment through
13 which individuals who will not unreasonably endanger the public,
14 including but not limited to individuals with mental or developmental
15 disabilities, may obtain treatment, habilitation, or both, in lieu of
16 confinement.

17 **Sec. 2.** RCW 10.05.010 and 2002 c 219 s 6 are each amended to read
18 as follows:

1 (1) In a court of limited jurisdiction a person charged with a
2 misdemeanor or gross misdemeanor may petition the court to be
3 considered for a deferred prosecution program. The petition shall be
4 filed with the court at least seven days before the date set for trial
5 but, upon a written motion and affidavit establishing good cause for
6 the delay and failure to comply with this section, the court may waive
7 this requirement subject to the defendant's reimbursement to the court
8 of the witness fees and expenses due for subpoenaed witnesses who have
9 appeared on the date set for trial.

10 (2) A person charged with a traffic infraction, misdemeanor, or
11 gross misdemeanor under Title 46 RCW shall not be eligible for a
12 deferred prosecution program unless the court makes specific findings
13 pursuant to RCW 10.05.020. Such person shall not be eligible for a
14 deferred prosecution program more than once, unless a mental or
15 developmental disability is the basis for the subsequent deferred
16 prosecution. Separate offenses committed more than seven days apart
17 may not be consolidated in a single program.

18 (3) A person charged with a misdemeanor or a gross misdemeanor
19 under chapter 9A.42 RCW shall not be eligible for a deferred
20 prosecution program unless the court makes specific findings pursuant
21 to RCW 10.05.020. Such person shall not be eligible for a deferred
22 prosecution program more than once, unless a mental or developmental
23 disability is the basis for the subsequent deferred prosecution.

24 **Sec. 3.** RCW 10.05.015 and 1985 c 352 s 5 are each amended to read
25 as follows:

26 At the time of arraignment a person charged with (~~a violation of~~
27 ~~RCW 46.61.502 or 46.61.504~~) any offense eligible for deferred
28 prosecution under this chapter may be given a statement by the court
29 that explains the availability, operation, and effects of the deferred
30 prosecution program.

31 **Sec. 4.** RCW 10.05.020 and 2002 c 219 s 7 are each amended to read
32 as follows:

33 (1) Except as provided in subsection (2) of this section, the
34 petitioner shall allege under oath in the petition that the wrongful
35 conduct charged is the result of or caused by alcoholism, drug
36 addiction, or mental problems, including but not limited to mental or

1 developmental disabilities, for which the person is in need of
2 treatment and unless treated the probability of future recurrence is
3 great, along with a statement that the person agrees to pay the cost of
4 a diagnosis and treatment of the alleged problem or ~~((problems))~~
5 disability if financially able to do so. The petition shall also
6 contain a case history and written assessment prepared by an approved
7 alcoholism treatment program as designated in chapter 70.96A RCW if the
8 petition alleges alcoholism, an approved drug program as designated in
9 chapter 71.24 RCW if the petition alleges drug addiction, ~~((or))~~ by an
10 approved mental health center, a regional support network, or a
11 regional support network contracted provider if the petition alleges a
12 mental ~~((problem))~~ disability, or by the department of social and
13 health services division of developmental disabilities if the petition
14 alleges a developmental disability and the person is eligible to
15 receive services from the division of developmental disabilities.

16 (2) In the case of a petitioner charged with a misdemeanor or gross
17 misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under
18 oath in the petition that the petitioner is the natural or adoptive
19 parent of the alleged victim; that the wrongful conduct charged is the
20 result of parenting problems for which the petitioner is in need of
21 services; that the petitioner is in need of child welfare services
22 under chapter 74.13 RCW to improve his or her parenting skills in order
23 to better provide his or her child or children with the basic
24 necessities of life; that the petitioner wants to correct his or her
25 conduct to reduce the likelihood of harm to his or her minor children;
26 that in the absence of child welfare services the petitioner may be
27 unable to reduce the likelihood of harm to his or her minor children;
28 and that the petitioner has cooperated with the department of social
29 and health services to develop a plan to receive appropriate child
30 welfare services; along with a statement that the person agrees to pay
31 the cost of the services if he or she is financially able to do so.
32 The petition shall also contain a case history and a written service
33 plan from the department of social and health services.

34 (3) Before entry of an order deferring prosecution, a petitioner
35 shall be advised of his or her rights as an accused and execute, as a
36 condition of receiving treatment, a statement that contains: (a) An
37 acknowledgment of his or her rights; (b) an acknowledgment and waiver
38 of the right to testify, the right to a speedy trial, the right to call

1 witnesses to testify, the right to present evidence in his or her
2 defense, and the right to a jury trial; (c) a stipulation to the
3 admissibility and sufficiency of the facts contained in the written
4 police report; and (d) an acknowledgment that the statement will be
5 entered and used to support a finding of guilty if the court finds
6 cause to revoke the order granting deferred prosecution. The
7 petitioner shall also be advised that he or she may, if he or she
8 proceeds to trial and is found guilty, be allowed to seek suspension of
9 some or all of the fines and incarceration that may be ordered upon the
10 condition that he or she seek treatment and, further, that he or she
11 may seek treatment from public and private agencies at any time without
12 regard to whether or not he or she is found guilty of the offense
13 charged. He or she shall also be advised that the court will not
14 accept a petition for deferred prosecution from a person who sincerely
15 believes that he or she is innocent of the charges or sincerely
16 believes that he or she does not, in fact, suffer from alcoholism, drug
17 addiction, or mental problems, or in the case of a petitioner charged
18 under chapter 9A.42 RCW, sincerely believes that he or she does not
19 need child welfare services.

20 (4) Before entering an order deferring prosecution, the court shall
21 make specific findings that: (a) The petitioner has stipulated to the
22 admissibility and sufficiency of the facts as contained in the written
23 police report; (b) the petitioner has acknowledged the admissibility of
24 the stipulated facts in any criminal hearing on the underlying offense
25 or offenses held subsequent to revocation of the order granting
26 deferred prosecution; (c) the petitioner has acknowledged and waived
27 the right to testify, the right to a speedy trial, the right to call
28 witnesses to testify, the right to present evidence in his or her
29 defense, and the right to a jury trial; and (d) the petitioner's
30 statements were made knowingly and voluntarily. Such findings shall be
31 included in the order granting deferred prosecution.

32 **Sec. 5.** RCW 10.05.030 and 2002 c 219 s 8 are each amended to read
33 as follows:

34 The arraigning judge upon consideration of the petition and with
35 the concurrence of the prosecuting attorney may continue the
36 arraignment and refer such person for a diagnostic investigation and
37 evaluation to an approved alcoholism treatment program as designated in

1 chapter 70.96A RCW, if the petition alleges an alcohol problem, an
2 approved drug treatment center as designated in chapter 71.24 RCW, if
3 the petition alleges a drug problem, to an approved mental health
4 center, if the petition alleges a mental problem, including but not
5 limited to a mental or developmental disability, or the department of
6 social and health services if the petition is brought under RCW
7 10.05.020(2).

8 **Sec. 6.** RCW 10.05.040 and 2002 c 219 s 9 are each amended to read
9 as follows:

10 The ((~~facility~~)) program to which such person is referred, or the
11 department of social and health services if the petition is brought
12 under RCW 10.05.020(2), shall conduct an investigation and examination
13 to determine:

- 14 (1) Whether the person suffers from the problem described;
- 15 (2) Whether the problem is such that if not treated, or if no child
16 welfare services are provided, there is a probability that similar
17 misconduct will occur in the future;
- 18 (3) Whether extensive and long term treatment ((~~is~~)) or
19 habilitation supports and services are required;
- 20 (4) Whether effective treatment or child welfare services for the
21 person's problem are available; and
- 22 (5) Whether the person is amenable to treatment or habilitation
23 supports and services or willing to cooperate with child welfare
24 services.

25 **Sec. 7.** RCW 10.05.050 and 2002 c 219 s 10 are each amended to read
26 as follows:

27 (1) The ((~~facility~~)) program, or the department of social and
28 health services if the petition is brought under RCW 10.05.020(2),
29 shall make a written report to the court stating its findings and
30 recommendations after the examination required by RCW 10.05.040. If
31 its findings and recommendations support treatment, habilitation
32 supports and services, or the implementation of a child welfare service
33 plan, it shall also recommend a treatment or service plan setting out:

- 34 (a) The type;
- 35 (b) Nature;
- 36 (c) Length;

1 (d) A treatment or service time schedule; and

2 (e) Approximate cost of the treatment or child welfare services.

3 (2) In the case of a child welfare service plan, the plan shall be
4 designed in a manner so that a parent who successfully completes the
5 plan will not be likely to withhold the basic necessities of life from
6 his or her child.

7 (3) The report with the treatment or service plan shall be filed
8 with the court and a copy given to the petitioner and petitioner's
9 counsel. A copy of the treatment or service plan shall be given to the
10 prosecutor by petitioner's counsel at the request of the prosecutor.
11 The evaluation facility, or the department of social and health
12 services if the petition is brought under RCW 10.05.020(2), making the
13 written report shall append to the report a commitment by the treatment
14 ((facility)) program or the department of social and health services
15 that it will provide the treatment or child welfare services in
16 accordance with this chapter. The facility or the service provider
17 shall agree to provide the court with a statement every three months
18 for the first year and every six months for the second year regarding
19 (a) the petitioner's cooperation with the treatment or child welfare
20 service plan proposed and (b) the petitioner's progress or failure in
21 treatment or child welfare services. These statements shall be made as
22 a declaration by the person who is personally responsible for providing
23 the treatment or services.

24 **Sec. 8.** RCW 10.05.060 and 1994 c 275 s 17 are each amended to read
25 as follows:

26 If the report recommends treatment, habilitation supports and
27 services, or both, the court shall examine the treatment plan,
28 habilitation plan, or both. If it approves the plan and the petitioner
29 agrees to comply with its terms and conditions and agrees to pay the
30 cost thereof, if able to do so, or arrange for the treatment,
31 habilitation services, or both, an entry shall be made upon the
32 person's court docket showing that the person has been accepted for
33 deferred prosecution. A copy of the treatment plan shall be attached
34 to the docket, which shall then be removed from the regular court
35 dockets and filed in a special court deferred prosecution file. If the
36 charge be one that an abstract of the docket showing the charge, the
37 date of the violation for which the charge was made, and the date of

1 petitioner's acceptance is required to be sent to the department of
2 licensing, an abstract shall be sent, and the department of licensing
3 shall make an entry of the charge and of the petitioner's acceptance
4 for deferred prosecution on the department's driving record of the
5 petitioner. The entry is not a conviction for purposes of Title 46
6 RCW. Upon receipt of the abstract of the docket, the department shall
7 issue the petitioner a probationary license in accordance with RCW
8 46.20.355, and the petitioner's driver's license shall be on
9 probationary status for five years from the date of the violation that
10 gave rise to the charge. The department shall maintain the record for
11 ten years from date of entry of the order granting deferred
12 prosecution.

13 **Sec. 9.** RCW 10.05.070 and 1985 c 352 s 10 are each amended to read
14 as follows:

15 When treatment, habilitation supports and services, or both is
16 either not recommended or not approved by the judge, or the petitioner
17 declines to accept the treatment or habilitation plan, the petitioner
18 shall be arraigned on the charge.

19 **Sec. 10.** RCW 10.05.090 and 1997 c 229 s 1 are each amended to read
20 as follows:

21 (1) If a petitioner, who has been accepted for a deferred
22 prosecution, fails or neglects to carry out and fulfill any term or
23 condition of the petitioner's treatment or habilitation plan or any
24 term or condition imposed in connection with the installation of an
25 interlock or other device under RCW 46.20.720, the facility, center,
26 institution, or agency administering the treatment or the entity
27 administering the use of the device, shall immediately report such
28 breach to the court, the prosecutor, and the petitioner or petitioner's
29 attorney of record, together with its recommendation. The court upon
30 receiving such a report shall hold a hearing to determine whether the
31 petitioner should be removed from the deferred prosecution program. At
32 the hearing, evidence shall be taken of the petitioner's alleged
33 failure to comply with the treatment or habilitation plan or device
34 installation and the petitioner shall have the right to present
35 evidence on his or her own behalf. The court shall either order that

1 the petitioner continue on the treatment or habilitation plan ((~~or~~)),
2 be removed from deferred prosecution, or be referred for detention by
3 a mental health professional pursuant to chapter 71.05 RCW.

4 (2)(a) If the petitioner is civilly committed under chapter 71.05
5 RCW, the decision of whether to remove the petitioner from deferred
6 prosecution shall be continued until the petitioner is determined no
7 longer to meet the criteria for civil commitment under chapter 71.05
8 RCW.

9 (b) Once a determination has been made under chapter 71.05 RCW that
10 the petitioner no longer meets the criteria for civil commitment, a
11 hearing shall be held to determine whether the petitioner should be
12 removed from the deferred prosecution program. At the hearing,
13 evidence shall be taken of the petitioner's alleged failure to comply
14 with the treatment or habilitation plan or device installation, and the
15 petitioner shall have the right to present evidence on his or her own
16 behalf. The court shall either order that:

17 (i) The petitioner continue on the original or an amended treatment
18 or habilitation plan;

19 (ii) The petitioner be removed from deferred prosecution; or

20 (iii) The charges pending against the petitioner be dismissed if
21 the period during which the petitioner was civilly committed under
22 chapter 71.05 RCW exceeds the length of the treatment or habilitation
23 program.

24 (3) If removed from deferred prosecution, the court shall enter
25 judgment pursuant to RCW 10.05.020 and, if the charge for which the
26 deferred prosecution was granted was a misdemeanor or gross misdemeanor
27 under Title 46 RCW, shall notify the department of licensing of the
28 removal and entry of judgment.

29 **Sec. 11.** RCW 10.05.100 and 1998 c 208 s 2 are each amended to read
30 as follows:

31 (1) Except as provided in subsection (2) of this section, if a
32 petitioner is subsequently convicted of a similar offense that was
33 committed while the petitioner was in a deferred prosecution program,
34 upon notice the court shall remove the petitioner's docket from the
35 deferred prosecution file and the court shall enter judgment pursuant
36 to RCW 10.05.020.

1 (2) If the basis of the deferred prosecution is a mental or
2 developmental disability and the petitioner is subsequently convicted
3 of a similar offense that was committed while the petitioner was in a
4 deferred prosecution program, upon notice the court shall:

5 (a) Remove the petitioner's docket from the deferred prosecution
6 file and enter judgment pursuant to RCW 10.05.020; or

7 (b) Order a hearing to be held to determine whether the petitioner
8 should be removed from the deferred prosecution program or have his or
9 her treatment or habilitation plan amended. At the hearing, the
10 petitioner shall have the right to present evidence on his or her own
11 behalf.

12 **Sec. 12.** RCW 10.05.120 and 2003 c 220 s 1 are each amended to read
13 as follows:

14 (1) Except as provided in RCW 10.05.090, three years after
15 receiving proof of successful completion of the two-year treatment
16 program, and following proof to the court that the petitioner has
17 complied with the conditions imposed by the court following successful
18 completion of the two-year treatment program, but not before five years
19 following entry of the order of deferred prosecution pursuant to a
20 petition brought under RCW 10.05.020(1), the court shall dismiss the
21 charges pending against the petitioner.

22 (2) When a deferred prosecution is ordered pursuant to a petition
23 brought under RCW 10.05.020(2) and the court has received proof that
24 the petitioner has successfully completed the child welfare service
25 plan, or the plan has been terminated because the alleged victim has
26 reached his or her majority and there are no other minor children in
27 the home, the court shall dismiss the charges pending against the
28 petitioner: PROVIDED, That in any case where the petitioner's parental
29 rights have been terminated with regard to the alleged victim due to
30 abuse or neglect that occurred during the pendency of the deferred
31 prosecution, the termination shall be per se evidence that the
32 petitioner did not successfully complete the child welfare service
33 plan.

34 **Sec. 13.** RCW 10.05.160 and 1999 c 143 s 44 are each amended to
35 read as follows:

1 The prosecutor may appeal an order granting deferred prosecution on
2 any or all of the following grounds:

3 (1) Prior deferred prosecution has been granted to the defendant,
4 unless a mental or developmental disability is the basis for the
5 subsequent deferred prosecution;

6 (2) Failure of the court to obtain proof of insurance or a
7 treatment plan conforming to the requirements of this chapter;

8 (3) Failure of the court to comply with the requirements of RCW
9 10.05.100;

10 (4) Failure of the evaluation facility to provide the information
11 required in RCW 10.05.040 and 10.05.050, if the defendant has been
12 referred to the facility for treatment. If an appeal on such basis is
13 successful, the trial court may consider the use of another treatment
14 program.

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